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CLERK U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

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Attorney for Plaintiff

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

MJJ

SARABJIT KAUR THIND,

Plaintiff,

vs.

EMILIO T. GONZALEZ,
Director, United States Citizenship
and Immigration Services,

Defendant

Case No.

C 07 3959
COMPLAINT FOR DECLARATORY
JUDGMENT AND INJUNCTION

Plaintiff alleges:

1. This action is brought pursuant to the provisions of 28 U.S.C. § 1331 and 5 U.S.C. §§ 701 - 706.

2. Defendant is the Director of the United States Citizenship and Immigration Services, (USCIS), an agency of the United States as defined by 5 U.S.C. §701(b)(1), charged with the duty to administer and enforce the Immigration and Nationality Act, including the adjudication of an asylee relative petition filed pursuant to 8 C.F.R. §208.21(c) to accord derivative asylum under 8 U.S.C. §1158(b)(3)(A).

3. Plaintiff is an alien who was granted asylum in the United States on November 27, 2000.
See, Exhibit A.

1 4. On December 2, 2002 plaintiff petitioned the USCIS to accord her husband, Jaswant Singh
2 Thind, derivative asylum. On March 2, 2004 plaintiff's petition was denied. See, Exhibit B.

3 5. On July 13, 2006 the USCIS reopened the petition for approval pending a fingerprint check
4 of Jaswant Singh Thind. See, Exhibit C.

5 6. Jaswant Singh was fingerprinted by the USCIS on July 26, 2006. See, Exhibit D.

6 7. Plaintiff's asylee relative petition remains pending.

7 8. There is no administrative appeal from the failure to adjudicate plaintiff's petition.

8 9. There is a real and actual controversy between the parties. Plaintiff has no adequate
9 remedy at law. Plaintiff has suffered and will continue to suffer irreparable injury as result of the
10 acts of the USCIS because until plaintiff's petition is approved, plaintiff's husband, Jaswant Singh
11 Thind, will remain an undocumented alien, subject to arrest and removal, and without authorization
12 to work legally in the United States.

13 WHEREFORE, plaintiff prays judgment.

14 1. Declaring that defendant has violated 8 U.S.C. §1158(b)(3)(A), 5 U.S.C. §555(b), and 8
15 C.F.R. §§ 103.2 and 208.21 in the adjudication of plaintiff's asylee relative petition.

16 2. Preliminarily and permanently enjoining defendant, his agents, and delegates to
17 immediately adjudicate plaintiff's asylee relative petition.

18 3. Awarding plaintiff her costs and reasonable attorneys fees incurred in this action;

19 4. Granting such other and further relief as may be appropriate.

20 Dated: August 1, 2007


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23 JONATHAN M. KAUFMAN
24 Attorney For Plaintiff
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EXHIBIT A



U.S. Department of Justice

Immigration and Naturalization Service
San Francisco Asylum Office
PO Box 77530
San Francisco, CA 94107

Date: **28 NOV 2000**

A78646333 Sarabjit THIND

Sarabjit Thind
31221 Kimberly Ct.
Union City, CA 94587

Asylum Approval

Dear Ms. Thind:

This letter refers to your request for asylum in the United States filed on Form I-589.

It has been determined that you are eligible for asylum in the United States. Attached please find a completed Form I-94, Arrival Departure Record, indicating that you have been granted asylum status in the United States pursuant to §208(a) of the Immigration and Nationality Act (INA) as of **November 27, 2000**. You have been granted asylum in the United States for an indefinite period. This grant of asylum includes your dependents listed above who are present in the United States, were included in your asylum application, and for whom you have established a qualifying relationship by a preponderance of evidence.

In order to request derivative asylum status for any spouse or child who was not included in your asylum request, you must submit a Form I-730, Refugee and Asylee Relative Petition, to the Immigration and Naturalization Service (INS).

You are eligible for employment authorization for as long as you remain in asylum status. Your dependents listed above are also eligible for employment authorization, so long as they retain derivative asylum status. However, you must apply for and obtain an Employment Authorization Document (EAD) as evidence of your eligibility to work in the United States. To obtain an EAD, you must submit to the INS a Form I-765, Application for Employment Authorization. We recommend that you include a copy of this letter when applying for work authorization as an asylee.

If you plan to depart the United States, you must obtain permission to return to the United States before you leave this country. If you do not obtain permission, you may be unable to reenter the United States, or you may be placed in proceedings where you will be required to establish your asylum status. You may apply for a Refugee Travel Document on a Form I-131, Application for Travel Document.

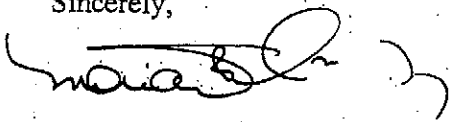
Asylum status does not give you the right to remain permanently in the United States. Asylum status may be terminated if you no longer have a well-founded fear of persecution because of a fundamental change in circumstances, you have obtained protection from another country, or you have committed certain crimes or engaged in other activity that makes you ineligible to retain asylum status in the United States. See INA § 208(c)(2) and 8 CFR §208.22(a).

You may apply for lawful permanent resident status under section 209(b) of the Immigration and Nationality Act after you have been physically present in the United States for a period of one year after the date you were granted asylum status. To apply for lawful permanent residence status, you must submit to the INS Nebraska Service Center (NSC) a Form I-485, Application to Register Permanent Residence or Adjust Status at the following address: P.O. Box 87485, Lincoln, Nebraska, 68501-7485.

You must notify the INS of any change of address within ten days of any such change. You may obtain a Form AR-11 at your nearest post office or INS office to comply with this requirement.

You may obtain any of the forms noted above at an INS District Office or INS Forms Center. Instructions for the forms explain how to complete the forms, what documents to attach and where to send the completed forms.

Sincerely,



(for)
Emilia Bardini,
Director, San Francisco Asylum Office

cc:

Enclosure: I-94 Card(s)

Departure Number

25515051X 07

ASYLUM STATUS GRANTED
INDEFINITELY PURSUANT TO
SEC. 208 OF THE INA

Immigration and
Naturalization Service

NOV 27 2000

I-94
Departure Record

ZSF-106

78646333

14. Family Name THAINA	16. Birth Date (Day/Mo/Yr) 11/5/73
15. First (Given) Name SARABJIT	
17. Country of Citizenship INDIA	

ENGLISH

STAPLE HERE

EXHIBIT B



U.S. Department of Justice
Immigration and Naturalization Service

Nebraska Service Center
P.O. Box 82521
Lincoln, NE 68501-2521

MAR 2 2004

A78646333
Refer To File No.
LIN0304855268
LIN0304855273
LIN0304855279

SARABJIT KAUR THIND
31221 KIMBERLY COURT
UNION CITY CA 94587

Dear Madam:

This refers to the Refugee/Asylee Relative Petitions filed by you on December 2, 2002 on behalf of Jaswant Singh Thind, Romas Singh Thind, and Saniya Kaur Thind under section 208 of the Immigration and Nationality Act, as amended.

To request benefits for an accompanying or following-to-join relative under section 208 of the Act, a petitioner must file Form I-730 within two years of the date he or she was granted asylum status.

Title 8, Code of Federal Regulations, section 208.21 states in pertinent part:

(c) Spouse or child in the United States. When a spouse or child of an alien granted asylum is in the United States, but was not included in the asylee's application, the asylee may request following-to-join benefits for his/her spouse or child by filing for each qualifying family member a separate Form I-730, Refugee/Asylee Relative Petition . . . (Additionally, a separate Form I-730 must be filed by the asylee for each qualifying member before February 28, 2000 or within 2 years of the date in which he/she was granted asylum status, whichever is later, unless it is determined by the Service that this period should be extended for humanitarian reasons.

(d) Spouse or child outside the United States. When a spouse or child of an alien granted asylum is outside the United States, the asylee may request following-to-join benefits for his/her spouse or child(ren) by filing a separate Form I-730 . . . A separate Form I-730 for each qualifying member must be filed before February 28, 2000 or within two years of the date in which he/she was granted asylum status, whichever is later, unless it is determined by the Service that this period should be extended for humanitarian reasons.

THIND, Jaswant S.; et al.

Page 2

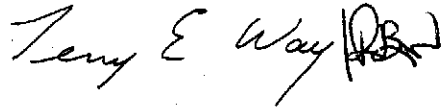
LIN 03 048 55268; et al.

Service records indicate that you were granted asylum in the United States on November 27, 2000. These petitions were filed on December 2, 2002, more than two years after you were granted asylum in the United States. It does not appear that circumstances exist which would warrant the extension of the filing period. Therefore, you are ineligible to file Form I-730 at this time, and these petitions may not be approved.

In view of the above, this petition must be and hereby is denied.

This denial may not be appealed. However, if you believe that you can overcome the grounds for denial, you may submit a new petition with the appropriate documentation to this office.

Sincerely,

A handwritten signature in black ink that reads "Terry E. Way" followed by a stylized monogram or set of initials.

Terry E. Way
Director
NSC/GMG060

cc: THIND, Jaswant S.	A96157607
THIND, Romas S.	A96157608
THIND, Saniya K.	A96157609

EXHIBIT C

U.S. Department of Homeland Security
P.O. Box 82521
Lincoln, NE 68501-2521



U.S. Citizenship
and Immigration
Services

July 18, 2006

Refer to File Number:
A96 157 607/LIN-03-048-55268

SARABJIT KAUR THIND
2925 MONUMENT BLVD APT 128
CONCORD CA 94520

Dear Sir or Madam:

Case Type: FORM I-730, REFUGEE/ASYLEE RELATIVE PETITION
Beneficiary: THIND, Jaswant Singh

This refers to the Refugee/Asylee Relative Petition filed by you on December 2, 2002, on behalf of Jaswant Singh Thind, under section 208 of the Immigration and Nationality Act, as amended.

On July 13, 2006 the Service sent you a notice that your petition has been reopened for approval, pending a fingerprint check. However, the appointment for the fingerprinting was mistakenly scheduled before you could be notified, therefore; a new appointment will have to be scheduled. Enclosed is the I-797C notification of the original date, time, and location of your scheduled fingerprint appointment. Please take this letter, along with the enclosed I-797C, to the address highlighted on the bottom of the notification to have your appointment rescheduled. To process your petition, the U.S. Citizenship & Immigration Services (USCIS) must take your fingerprints and have them cleared by the FBI, consequently; if you fail to request rescheduling, your petition will be considered abandoned.

The Service apologizes for any inconvenience this may cause.

If you have any questions regarding this notice, please call 1-800-375-5283.

Sincerely,

A handwritten signature in black ink, reading "F. Gerard Heinauer".

F. Gerard Heinauer
Acting Director

NSC/KMC/404

EXHIBIT D

Department of Homeland Security
U.S. Citizenship and Immigration Services

I-797C, Notice of Action

THE UNITED STATES OF AMERICA

Fingerprint Notification

NOTICE DATE
07/10/2006

CASE TYPE
I730 Application where Beneficiary is in the U.S.

SOCIAL SECURITY NUMBER

USCIS A#
A096157607

APPLICATION NUMBER
LIN0304855268

CODE
1

SERVICE CENTER
NSC

PAGE
1 of 1

APPLICANT NAME AND MAILING ADDRESS

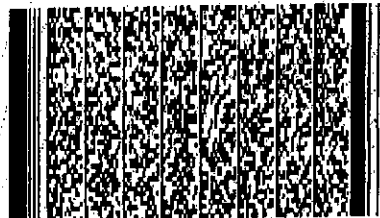
JASWANT SINGH THIND

2925 MONUMENT BLVD APT 122

CONCORD, CA 94520

SC SITE CODE: VEB
BIOMETRICS QA REVIEW BY

ON
ENPRINTS QA REVIEW BY:
828807 ON 7/26/06



To process your application, the U. S. Citizenship & Immigration Services (USCIS) must take your fingerprints and have them cleared by the FBI. **PLEASE APPEAR AT THE BELOW APPLICATION SUPPORT CENTER AT THE DATE AND TIME SPECIFIED.**

If you are unable to do so, complete the bottom of this notice and return the entire original notice to the address below.

RESCHEDULING YOUR APPOINTMENT WILL DELAY YOUR APPLICATION. IF YOU FAIL TO APPEAR AS SCHEDULED BELOW AND FAIL TO REQUEST RESCHEDULING, YOUR APPLICATION WILL BE CONSIDERED ABANDONED.

APPLICATION SUPPORT CENTER

USCIS OAKLAND

2040 TELEGRAPH AVE.

OAKLAND, CA 94612

DATE AND TIME OF APPOINTMENT

07/13/2006

8:00 AM

7-26-06
PER
MGR

WHEN YOU GO TO THE APPLICATION SUPPORT CENTER TO HAVE YOUR FINGERPRINTS TAKEN, YOU MUST BRING:

1. **THIS APPOINTMENT NOTICE** and
2. **PHOTO IDENTIFICATION.** Naturalization applicants must bring their Alien Registration Card. All other applicants must bring a passport, driver's license, national ID, military ID, or State-issued photo ID. If you appear without proper identification, you may not be fingerprinted.

PLEASE DISREGARD THIS NOTICE IF YOUR APPLICATION HAS ALREADY BEEN GRANTED.

REQUEST FOR RESCHEDULING

Please reschedule my appointment for the next available: ☐ Wednesday afternoon ☐ Saturday afternoon

U. S. Citizenship & Immigration Services (USCIS) cannot guarantee the day preferred, but will do so to the extent possible.

Upon receipt of your request, you will be provided a new appointment notice. Please mail your request to:

USCIS OAKLAND

2040 TELEGRAPH AVE.

OAKLAND, CA 94612

If you have any questions regarding this notice, please call 1-800-375-5283.

APPLICANT COPY

APPLICATION NUMBER
LIN0304855268



WARNING!

Due to limited seating availability in our lobby area, only persons who are necessary to assist with transportation or completing the fingerprint worksheet should accompany you.

If you have open wounds or bandages/casts when you appear, the USCIS may reschedule your appointment if it is determined your injuries will interfere with fingerprinting.